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07/25/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
39FJ-0001-I-2023
Lockman, Melissa
2.00

IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE DIVISION
LITTLE BEAVER CREEK BASIN (39FJ)
INTERLOCUTORY DECREE

\* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \*

CLAIMANT: Wolenetz Ranch Inc.

CASE 39FJ-0001-I-2023 39FJ 3760-00 39FJ 3761-00 39FJ 174032-00

## NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

#### MASTER'S REPORT

The above-captioned claims appeared in the Interlocutory Decree for Little Beaver Creek (Basin 39FJ) issued on September 22, 2022. The claims are owned by Wolenetz

Ranch Inc. The claims received issue remarks. Issue remarks are notations identifying potential legal or factual issues with water rights and the Water Court is required to resolve these potential issues.

## FINDINGS OF FACT

- 1. Claim 39FJ 3760-00 is a claim for water spreading on a 155.00-acre place of use. Claim 39FJ 3761-00 is a claim for sprinkler/flood irrigation on a 97.00-acre place of use. Claim 39FJ 174032-00 is a claim for water spreading on an 88.00-acre place of use.
- 2. Claims 39FJ 3760-00 and 39FJ 3761-00 were decreed as supplemental claims, meaning their places of use overlap.
  - 3. All three claims received the following issue remark:

ON 07/30/1987 DNRC FILED A MEMORANDUM STATING THAT THE PLACE OF USE AND VOLUME FOR CLAIM 39FJ 3760-00 ARE INCORRECT. DURING VERIFICATION, A PARCEL OF THE IRRIGATION SYSTEM WAS NOT INCLUDED ON THE CLAIM ABSTRACT. THE MEMORANDUM RECOMMENDS INCREASING THE PLACE OF USE, MAXIMUM ACRES, AND VOLUME TO INCLUDE THIS PARCEL. THE MEMOANROUM ALSO RECOMMENDS MODIFYING THE SUPPLEMENTAL RIGHTS REMARK ON CLAIMS 39FJ 3760-00 AND 39FJ 3761-00, AND ADDING A SUPPLEMENTAL RIGHTS REMARK TO CLAIM 39FJ 174032-00.

4. The 1987 DNRC memorandum recommends modifying the volume, maximum acres, and place of use for claim 39FJ 3761-00 as follows:

This field as determined by a field investigation, related to a supplemental irrigation right, is 36 acres in size. It appears that this 36 acres should be included under right 39FJ-W-003761.

Adding this 36 acres would affect the right as follows:

- 1. Parcel 005 should be:
  - 19 acres SW NW Section 20 Twp 4 North Rge 60 East Fallon County.

A parcel 007 should be added to include: 20 acres NW SW Section 20 Twp 4 North Rge 60 East Fallon County.

- 2. Total acreage should be 133 acres.
- 3. Total volume could be changed to 456 acre-feet as was claimed since this would fall within the guideline of 3.5 acre-feet/acre associated with standard 2 for climatic area 2 as was assigned to this claim.
- 5. The Court set a deadline for Claimant to review the DNRC's proposed changes and file evidence if they did not agree with them. Nothing was filed by the deadline.

## PRINCIPLES OF LAW

- 1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.
- 2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.

- 3. A preponderance of the evidence is evidence that shows a fact is "more probable than not." *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.
- 4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).
- 5. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.
- 6. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.
- 7. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

# **CONCLUSIONS OF LAW**

- 1. The issue remark overcomes the prima facie status of claim 39FJ 3761-00. The evidence in the claim file shows by a preponderance of the evidence that the place of use should include an additional 16 acres in the SWNW and 20 acres in the NWSW of Section 20, T4N, R60E, Fallon County. The place of use should be modified accordingly, and the maximum acres should be increased to 133.00 acres.
- 2. The memorandum also recommends volume modifications to claim 39FJ 3761-00 based on the increased acreage, however the claim was not decreed with a quantified volume.
- 2. The supplemental rights remark on claims 39FJ 3760-00 and 39FJ 3761-00 should be modified to include claim 39FJ 174032-00. The same supplemental rights remark should be added to claim 39FJ 174032-00.

## **RECOMMENDATIONS**

- 1. The supplemental rights remark on claims 39FJ 3760-00 and 39FJ 3761-00 should be modified to include claim 39FJ 174032-00. The same supplemental rights remark should be added to claim 39FJ 174032-00.
- 2. The place of use and maximum acres on claim 39FJ 3761-00 should be modified as described above.
  - 3. The issue remark should be removed from the claims.

A post decree abstract of each water right claim reflecting the recommended changes is attached to this Report.

## ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

Wolenetz Ranch Inc 431 Webster Rd Baker, MT 59313-9703

#### **POST DECREE**

#### ABSTRACT OF WATER RIGHT CLAIM

#### LITTLE BEAVER CREEK

#### **BASIN 39FJ**

Water Right Number: 39FJ 3760-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

Status: ACTIVE

Owners: WOLENETZ RANCH INC

431 WEBSTER RD BAKER, MT 59313 9703

Priority Date: JUNE 30, 1969

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: WATER SPREADING

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS

OF DIRECT FLOW WATER SPREADING.

Volume: 310.00 AC-FT

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 155.00

Source Name: DUCK CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

IDGovt LotQtr SecSecTwpRgeCounty14NESWSW74N60EFALLON

Period of Diversion: JANUARY 1 TO DECEMBER 31

**Diversion Means:** HEADGATE

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>		<u>Acres</u>	Govt Lot	<b>Qtr Sec</b>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<b>County</b>
1		15.00		SESW	7	4N	60E	FALLON
2		10.00		NENW	18	4N	60E	FALLON
3		49.00		SW	17	4N	60E	FALLON
4		21.00		NWNW	20	4N	60E	FALLON
5		3.00		S2SWSE	7	4N	60E	FALLON
6		30.00		NWNE	18	4N	60E	FALLON
7		13.00		W2SE	17	4N	60E	FALLON
8		3.00		N2SENW	20	4N	60E	FALLON
9		3.00		N2SWNW	20	4N	60E	FALLON
10	_	8.00		S2NENW	20	4N	60E	FALLON
	Total:	155.00						

Remarks:

July 19, 2023 39FJ 3760-00 Page 2 of 2 Post Decree Abstract

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

3760-00

3761-00

174032-00

#### POST DECREE

#### ABSTRACT OF WATER RIGHT CLAIM

#### LITTLE BEAVER CREEK

#### **BASIN 39FJ**

Water Right Number: 39FJ 3761-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: WOLENETZ RANCH INC

431 WEBSTER RD BAKER, MT 59313 9703

Priority Date: NOVEMBER 30, 1949

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 2.01 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT

TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 133.00

Source Name: LITTLE BEAVER CREEK
Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID Govt Lot Qtr Sec Sec Twp Rge County

1 W2 20 4N 60E FALLON

**Period of Diversion:** MARCH 1 TO SEPTEMBER 30

**Diversion Means:** PUMP

2 S2 17 4N 60E FALLON

**Period of Diversion:** MARCH 1 TO SEPTEMBER 30

**Diversion Means:** PUMP

POINT OF DIVERSION IS MOVEABLE ALL ALONG SOURCE WITHIN LEGAL LAND

DESCRIPTION.

Period of Use: MARCH 1 TO SEPTEMBER 30

Place of Use:

<u>ID</u>	<u>Acres</u>	Govt Lot	<u> Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<b>County</b>
1	49.00		SW	17	4N	60E	FALLON
2	21.00		NWNW	20	4N	60E	FALLON
3	13.00		W2SE	17	4N	60E	FALLON
4	3.00		N2SENW	20	4N	60E	FALLON
5	19.00		N2SWNW	20	4N	60E	FALLON
6	8.00		S2NENW	20	4N	60E	FALLON
7	20.00		NWSW	20	4N	60E	FALLON
	Total: 122.00						

**Total:** 133.00

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#### Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

3760-00

3761-00

174032-00

#### POST DECREE

#### ABSTRACT OF WATER RIGHT CLAIM

#### LITTLE BEAVER CREEK

#### **BASIN 39FJ**

Water Right Number: 39FJ 174032-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

Status: ACTIVE

Owners: WOLENETZ RANCH INC

431 WEBSTER RD BAKER, MT 59313 9703

Priority Date: DECEMBER 31, 1952

Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: WATER SPREADING

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS

OF DIRECT FLOW WATER SPREADING.

Volume: 111.30 AC-FT

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 88.00

Source Name: UNNAMED TRIBUTARY OF LITTLE BEAVER CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

IDGovt LotQtr SecSecTwpRgeCounty1NENENE194N60EFALLON

Period of Diversion: FEBRUARY 1 TO NOVEMBER 30

**Diversion Means:** DAM

Reservoir: ONSTREAM

Govt Lot Otr Sec Sec Twp Rge County

NENENE 19 4N 60E FALLON

Diversion to Reservoir: DIVERSION # 1

Period of Use: FEBRUARY 1 TO NOVEMBER 30

Place of Use:

<u>ID</u>		<u>Acres</u>	Govt Lot	Qtr Sec	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<b>County</b>
1		27.00		NWNW	20	4N	60E	FALLON
2		34.00		SW	17	4N	60E	FALLON
3		3.00		N2SENW	20	4N	60E	FALLON
4		3.00		N2SWNW	20	4N	60E	FALLON
5		8.00		S2NENW	20	4N	60E	FALLON
6		13.00		W2SE	17	4N	60E	FALLON
	Total:	88.00						

Remarks:

July 19, 2023 39FJ 174032-00 Page 2 of 2 Post Decree Abstract

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

3760-00

3761-00

174032-00